

No. 14,605

IN THE

United States Court of Appeals
For the Ninth Circuit

FRANCIS L. SAUGET,

Appellant,

VS.

JOSE C. VILLAGOMEZ,

Appellee.

On Appeal from the District Court of Guam for the
Unincorporated Territory of Guam.

APPELLANT'S OPENING BRIEF.

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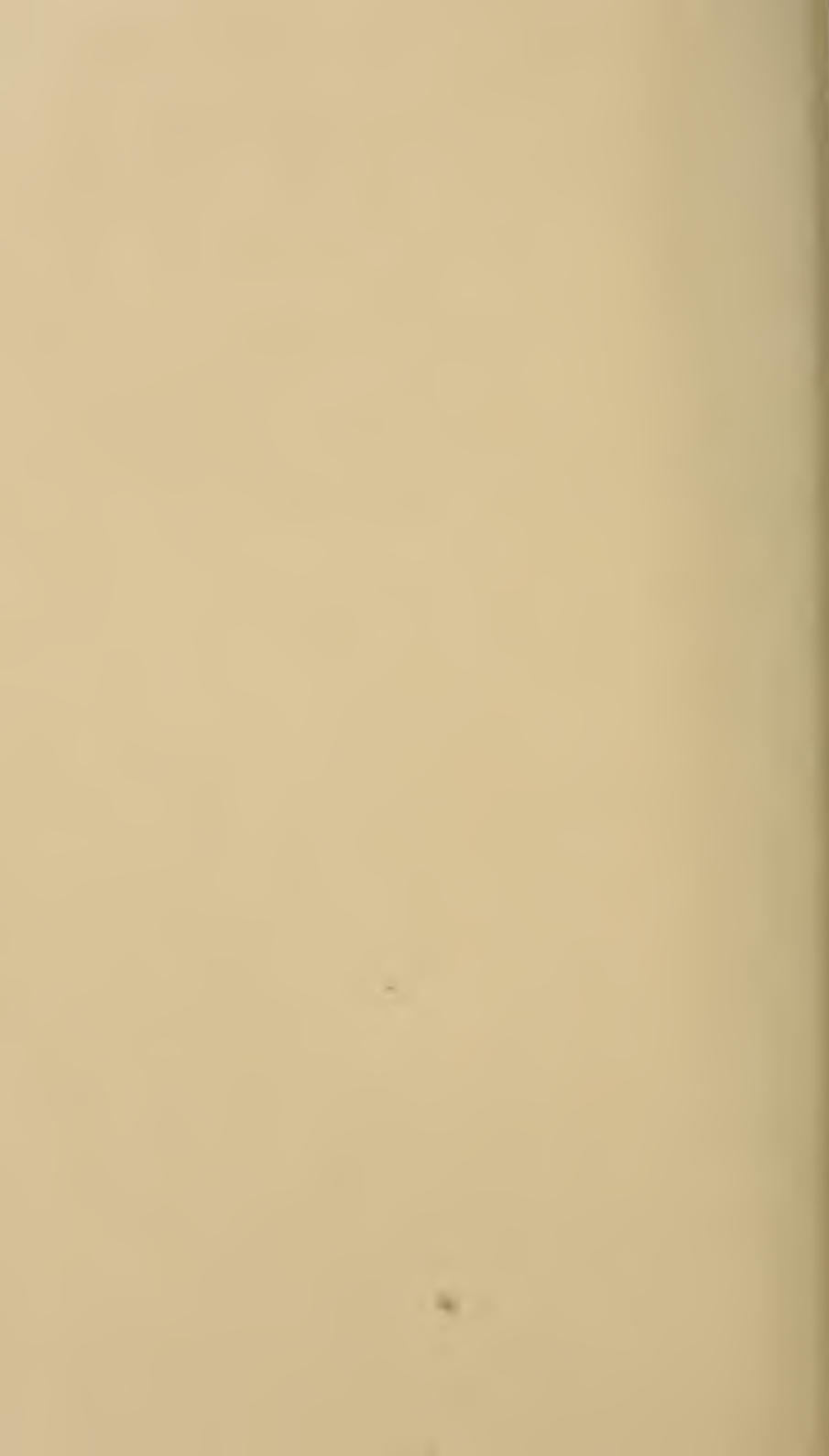
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JURISDICTION.

This is an appeal from a final judgment of the District Court of Guam entered on the 22nd day of October, 1954. Jurisdiction to hear this appeal is in this court by virtue of the provisions of Section 1424 T48 U.S.C.A. The amount in controversy exceeds Five Thousand Dollars.

STATEMENT OF CASE AND QUESTIONS PRESENTED.

This action is an action for ejectment brought by the owner against a mere licensee, seeking recovery

of the use and possession of a parcel of real property situated within the unincorporated territory of Guam. The property originally owned and registered in the name of Jesus B. Untalan was by him conveyed to Francis L. Sauget by warrantee deed on the 28th day of June, 1954. This property is adjoining to a tract of land owned by the sister of Jesus B. Untalan, who is the wife of appellee herein. For many years the appellee had been, pursuant to an oral license without consideration from Jesus B. Untalan, permitted to use this land for farming purposes. Jesus B. Untalan received no rent, paid all taxes, and executed no deeds or written agreements. The deed to appellant, Sauget, was subject to this oral license for the purpose of advising him of its existence and to secure to appellee the necessary time to remove any personal property thereon situated.

A survey was caused to be made by the appellant, the new owner, and it was discovered, when the dividing line between the piece owned by the wife of the appellee and the piece conveyed to appellant was determined, that there was a house, constructed by appellee, which appellee had claimed was on his wife's property, situated on the piece now owned by appellant Sauget. Accordingly, appellant caused a notice terminating the license to use for agricultural purposes to be served upon appellee, demanding his removal within 30 days and the surrender of possession. The appellee refused to vacate the premises. Accordingly an action in ejectment was commenced on the 12th day of August, 1954 seeking possession

of the property and for triple rent pursuant to the codes of Guam for the period of the unlawful holding over. The appellee answered denying that the property was of a value within the jurisdiction of the District Court of Guam, claiming purchase of the property in 1936, that he had been paying taxes thereon since 1936, claiming to hold by adverse possession.

The action came on for trial on the 7th day of October, 1954 and the District Court of Guam, after assuming jurisdiction of the action, at the end of the case awarded judgment to the appellee. From this judgment, appellant has appealed claiming numerous errors.

The questions presented herein for review are:

1. Did the District Court err in giving judgment for the defendant.
2. Whether the court misconstrued the pertinent statutes of the unincorporated territory of Guam.
3. Whether the judgment was contrary to the weight of the evidence.
4. Whether the court misconstrued the deed to the plaintiff.
5. Whether the court erred in considering defendant's claim to have title by adverse possession.
6. Did the court err in not determining the issue of right to possession and title.

STATUTES AND RULES INVOLVED.

Civil Code of Guam

Section 732.

Increase of property. The owner of a thing owns also all its products and accessions.

Section 789.

Termination of estates. A tenancy or other estate at will, however created, may be terminated by the landlord's giving notice in writing to the tenant, in the manner prescribed by Section 1162 of the Code of Civil Procedure, to remove from the premises within a period of not less than 30 days, to be specified in the notice.

Section 790.

Notice, effect. After such notice has been served, and the period specified by such notice has expired but not before, the landlord may reenter, or proceed according to law to recover possession.

Section 791.

Reentry generally. Whenever the right of reentry is given to a grantor or lessor in any grant or lease, or otherwise, such reentry may be made at any time after the right has accrued, upon 3 days' notice, as provided in Sections 1161 and 1162 of the Code of Civil Procedure.

Section 792.

Summary proceedings. Summary proceedings for obtaining possession of real property forcibly entered, or forcibly and unlawfully de-

tained, are provided for in Sections 1159 to 1175, both inclusive, of the Code of Civil Procedure.

Section 1013.

Fixtures. When a person affixes his property to the land or another, without an agreement permitting him to remove it, the thing affixed, except as provided in Section 1019, belongs to the owner of the land, unless he chooses to require the former to remove it.

Section 1047.

Owner ousted, may transfer. Any person claiming title to real property in the adverse possession of another may transfer it with the same effect as if in actual possession.

Section 1091.

Requisites for certain estates. An estate in real property, other than an estate at will or for a term not exceeding 1 year, can be transferred only by operation of law, or by an instrument in writing, subscribed by the party disposing of the same, or by his agent thereunto authorized by writing.

Section 1157.34.

Title not acquirable by adverse possession. After land has been registered, no title thereto adverse or in derogation to the title of the registered owner shall be required by any length of possession.

Section 1157.35.

Transferee of registered land not required to inquire or affected with notice. Except in case

of fraud, and except as herein otherwise provided, no person taking a transfer of registered land, or any estate or interest therein, or any charge upon the same, from the registered owner, shall be held to inquire into the circumstances under which, or the consideration for which, such owner or any previous registered owner was registered, or be affected with notice, actual or constructive, of any unregistered trust, lien, claim, demand, or interest; and the knowledge that any unregistered trust, lien, claim, demand, or interest is in existence shall not of itself be imputed as fraud.

Section 1157.38.

Unregistered title does not prevail against title of registered owner. No unregistered estate, power, right, claim, contract, or trust shall prevail against the title of a registered owner taking bona fide for a valuable consideration or of any person bona fide claiming through or under him.

Section 1213.

Record of conveyances. Every conveyance of real property acknowledged or proved and certified and recorded as prescribed by law from the time it is filed with the Director of Land Management is constructive notice of the contents thereof to subsequent purchasers and mortgagees.

Section 1214.

Nonrecorded void. Every conveyance of real property, other than a lease for a term not ex-

ceeding one year, is void as against any subsequent purchaser or mortgagee of the same property, or any part thereof, in good faith and for a valuable consideration, whose conveyance is first duly recorded, and as against any judgment affecting the title, unless such conveyance shall have been duly recorded prior to the record of notice of action.

Section 1624.

What contracts must be written. The following contracts are invalid, unless the same, or some note or memorandum thereof, is in writing and subscribed by the party to be charged, or by his agent: 1. An agreement that by its terms is not to be performed within a year from the making thereof; . . . 5. An agreement for the leasing for a longer period than 1 year, or for the sale of real property, or of an interest therein; and such agreement, if made by an agent of the party sought to be charged, is invalid, unless the authority of the agent is in writing, subscribed by the party sought to be charged; . . .

Section 1951.

Recording lease for real property. All leases of private real property for whatsoever term and conditions shall be recorded in the office of the Director of Finance. Failure to comply with this paragraph within 30 days after the date of any lease shall cause the lease to be null and void. A charge of 25 cents shall be made for recording each lease. Lands leased in any part of Guam may be used for the purposes of cultivation or stock farming, but the lessee shall

be responsible for any damage his animals or livestock may cause to crops or property of others, when such damage results from the lessee's lack of fences or failure to exercise proper care over said animals or livestock.

Section 3345.

Tenant willfully holding over. If any tenant, or any person in collusion with the tenant, holds over any lands or tenements after demand made and 1 month's notice, in writing given, requiring the possession thereof, such person holding over must pay the landlord double rent during the time he continues in possession after such notice.

Code of Civil Procedure

Section 62.

Original jurisdiction. Under Section 22(a) of the Organic Act of Guam the District Court of Guam has the original jurisdiction of a district court of the United States in all causes arising under the laws of the United States and has original jurisdiction in all other causes in Guam except those over which original jurisdiction has been transferred to and vested in the Island Court by Section 82 of this title. If it appears that an action or proceeding brought in the District Court is actually within the jurisdiction of the Island Court the District Court shall transfer it to the Island Court for hearing and determination.

Section 320.

Entry on real estate. No entry upon real estate is deemed sufficient or valid as a claim,

unless an action be commenced thereupon within 1 year after making such entry, and within 5 years from the time when the right to make it descended or accrued.

Section 321.

Possession, when presumed. Occupation deemed under legal title, unless adverse. In every action for the recovery of real property or the possession thereof the person establishing a legal title to the property is presumed to have been possessed thereof within the time required by law, and the occupation of the property by any other person is deemed to have been under and in subordination to the legal title, unless it appear that the property has been held and possessed adversely to such legal title, for 5 years before the commencement of the action.

Section 325.

What constitutes adverse possession under claim of title not written. For the purpose of constituting an adverse possession by a person claiming title, not founded upon a written instrument, judgment, or decree, land is deemed to have been possessed and occupied in the following cases only:

1. Where it has been protected by a substantial inclosure;
2. Where it has been usually cultivated or improved;

Provided, however, that in no case shall adverse possession be considered established under the provision of any section or sections of this code, unless it shall be shown that the land

has been occupied and claimed for the period of 10 years continuously, and the party or persons, their predecessors and grantors, have paid all the taxes, which have been levied and assessed upon such land.

Section 326.

Relation of landlord and tenant as affecting adverse possession. When the relation of landlord and tenant has existed between any persons, the possession of the tenant is deemed the possession of the landlord until the expiration of 5 years from the termination of the tenancy, or, where there has been no written lease, until the expiration of 5 years from the time of the last payment of rent, notwithstanding that such tenant may have acquired another title, or may have claimed to hold adversely to his landlord. But such presumptions cannot be made after the periods herein limited.

Section 735.

Damages in actions for forcible entry, etc., may be trebled. If a person recover damages for a forcible or unlawful entry in or upon, or detention of any buildings or any cultivated real property, judgment may be entered for three times the amount at which the actual damages are assessed.

Section 1160.

Forcible detainer defined. Every person is guilty of a "forcible detainer" who either:

1. By force, or by menaces and threats of violence, unlawfully holds and keeps the posses-

sion of any real property, whether the same was acquired peaceably or otherwise; or

2. Who, in the nighttime, or during the absence of the occupants of any land, unlawfully enters upon real property, and who, after demand made for the surrender thereof, for the period of 5 days, refuses to surrender the same to such former occupant.

The occupant of real property, within the meaning of this subdivision, is one who, within 5 days preceding such unlawful entry, was in the peaceable and undisturbed possession of such lands.

Section 1161.

Unlawful detainer defined. A tenant of real property, for a term less than life, is guilty of "unlawful detainer":

1. When he continues in possession in person or by subtenant, of the property, or any part thereof, after the expiration of the term for which it is let to him, without the permission of his landlord, or the successor in estate of his landlord, if any there be; including a case where the person to be removed became the occupant of the premises as a servant or employee and the relation of master and servant or employer and employee has been lawfully terminated, or the time fixed for such occupancy by the agreement between the parties has expired; but nothing in this subdivision contained shall be construed as preventing the removal of such occupant in any other lawful manner; but in case of a tenancy at will, it must first be terminated by notice, as prescribed in the civil code.

2. . . .

3. When he continues in possession, in person or by subtenant, after a neglect or failure to perform other conditions or covenants of the lease or agreement under which the property is held, including any covenant not to assign or sublet, then the one for the payment of rent, and 3 days' notice, in writing, requiring the performance of such conditions or covenants, or the possession of the property, shall have been served upon him, and if there is a subtenant in actual occupation of the premises, or any mortgagee of the term, or other person interested in its continuance, may perform the conditions or covenants of the lease or pay the stipulated rent, as the case may be, and thereby save the lease from forfeiture; Provided, if the conditions and covenants of the lease, violated by the lessee, cannot afterward be performed, then no notice, as last prescribed herein, need be given to said lessee or his subtenant, demanding the performance of the violated conditions or covenants of the lease.

A tenant may take proceedings, similar to those prescribed in this chapter, to obtain possession of the premises let to a subtenant in case of his unlawful detention of the premises underlet to him.

4. Any tenant or subtenant, assigning or subletting or committing waste upon the demised premises, contrary to the conditions or covenants of his lease, thereby terminates the lease, and the landlord, or his successor in estate, shall upon service of 5 days' notice to quit upon the person or persons in possession, be entitled to

restitution of possession of such demised premises under the provision of this chapter.

Section 1920.

Entries prima facie evidence. Entries in public or other official books or records, made in the performance of his duty by a public officer of Guam, or by another person in the performance of a duty specially enjoined by law, are prima facie evidence of the facts stated therein.

Section 1928.

Deed, evidence of transfer. A deed of conveyance of real property, purporting to have been executed by a proper officer in pursuance of legal process of any of the courts of record of Guam, acknowledged and recorded in the Department of Land Management, or the record of such deed, or a certified copy of such record is prima facie evidence that the property or interest therein described was thereby conveyed to the grantee named in such deed.

Section 1971.

Transfer of real property to be in writing. No estate or interest in real property, other than for leases for a term not exceeding 1 year, nor any trust or power over or concerning it, or in any manner relating thereto, can be created, granted, assigned, surrendered, or declared, otherwise than by operation of law, or a conveyance or other instrument in writing, subscribed by the party creating, granting, assigning, surrendering, or declaring the same, or by his lawful agent thereunto authorized by writing.

Section 1973.

Agreements, when must be in writing. In the following cases the agreement is invalid, unless the same or some note or memorandum thereof be in writing, and subscribed by the party charged, or by his agent. Evidence, therefore, of the agreement, cannot be received without the writing or secondary evidence of its contents: . . . 4. An agreement for the leasing for a longer period than one year, or for the sale of real property, or of an interest therein; and such agreement, if made by an agent of the party sought to be charged, is invalid, unless the authority of the agent is in writing, subscribed by the party sought to be charged; . . .

Federal Rules of Civil Procedure

Rule 52. Findings by the Court

(a) Effect. In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon and direct the entry of the appropriate judgment; and in granting or refusing interlocutory injunctions the court shall similarly set forth the findings of fact and conclusion of law which constitute the grounds of its action. Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses. The findings of a master, to the extent that the court adopts them, shall be considered as the findings of the court. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact and con-

clusions of law appear therein. Findings of fact and conclusions of law are unnecessary on decisions of motions under Rules 12 or 56 or any other motion except as provided in Rule 41 (b). As amended Dec. 27, 1946, effective March 19, 1948. . . .

SUMMARY OF ARGUMENT.

Appellant contends that the District Court of Guam was in error in giving judgment to the defendant rather than to the plaintiff. Appellant proved and it was not denied that title to the property in question was until the deed to appellant in his grantor, that the property was conveyed by warrantee deed to the appellant, that the appellee never had title and never had an interest of record in the property which is the subject matter of this action. That the court misconstrued the statutes of the unincorporated territory of Guam which provide that an estate at will—appellant had an oral license—may be terminated by thirty (30) days notice in writing. This was done. That the building built without permission becomes by statute in the absence of an agreement part of the land. No agreement was shown by appellee. That in any event an owner out of possession may convey his property. That by statute title or an interest could only be transferred by a written instrument—there was none to appellee, as he admitted. That title to registered land cannot be acquired adversely and must be transferred by a conveyance in writing. There was no

conveyance to appellee. That in any event the claim of appellee to title is barred by Section 320 of the Code of Civil Procedure of Guam as shown by appellee's own testimony.

That the entire weight of the evidence is against the judgment of the court. Mr. Untalan, the owner of a piece of registered land, could only be divested of title by operation of law or by his own deed. He executed this deed to appellant. Appellee by his own testimony never paid taxes on the land. Appellee did not pay rent for its use. Appellee produced a tax bill which covered the house situated on this land. This receipted bill showed that appellee had held out to the Government and presumably the public in general that the house was located on another adjacent lot. Appellee did not endeavor to correct this error if it was one. Yet appellee is an experienced business man of substantial interests. That the entire evidence showed that under the statutes of Guam the appellee can claim no rights in or to this property over and above the oral license, revocable at will, to use for agricultural purposes. No interest was ever granted to the appellee or acquired by him.

The court misconstrued the deed to appellant when it considered that there was any notice to appellant of an adverse claim or interest. An oral license is not a claim or an interest in real estate and is by its very nature revocable at will. Under the statutes registered land cannot be claimed adversely. The defendant's claim to hold title by adverse possession

is not a defense which in the circumstances can be considered since it is contrary to the express provisions of the statutes.

The court was in grave error when, without making finding of fact or conclusions of law therefrom, it did not finally determine the issues. Possession is one issue, but the court failed to determine the reasonable monthly rental value, determine the period of appellee's occupancy, if any, or determine who owned the property, all issues raised by the pleadings and before the court. The court should be reversed and instructed to enter judgment for the plaintiff.

I.

THE COURT ERRED IN NOT ENTERING JUDGMENT FOR THE PLAINTIFF.

The court was in error when it failed to give judgment for the plaintiff and acted contrary to the statutes and the evidence in this case. The issues and factual situation in this case are few and appellant contends are very simple. Jesus B. Untalan had for many years owned a parcel of land in the unincorporated territory of Guam. (Stipulation T.R. 16-17, Certificate of Guaranteed Claim No. 3526, 27 January 1932. Plaintiff's Exhibit No. 1.) It was admitted that this Lot No. 2288, Lalo, Barrigada, less certain portions conveyed or condemned previously and not herein of concern was conveyed, including the reversion of certain portions held by the

conveyance to appellee. That in any event the claim of appellee to title is barred by Section 320 of the Code of Civil Procedure of Guam as shown by appellee's own testimony.

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I.

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Government for highway purposes the title to which is inclusive, by warrantee deed to Francis L. Sauget on the 29th day of June 1954 by Jesus B. Untalan. This instrument was recorded in the Department of Land Management on 29 June 1954 as Instrument 027298 (Plaintiff's Exhibit No. 2, T.R. 17-18). Thus appellant contends that he has clearly shown that Jesus B. Untalan was the registered owner of Lot 2288, Lalo, Barrigada. (T.R. 21.) Jose C. Laguana, the custodian of the Land Records (T.R. 15), stated that he had examined the records, that Jesus B. Untalan was the owner of the lot in question, that there remained a portion untransferred which portion in 1954 was conveyed to appellant Sauget (T.R. 23). That all of the instruments affecting Lot 2288 were present in court. (T.R. 23.) A map showing the property in question, the portion sold to appellant shaded in green (Plaintiff's Exhibit No. 3), was introduced without objection. (T.R. 25.) Jesus B. Untalan, the original owner, a witness for plaintiff testified that he executed the deed to the appellant, that he never sold any portion though some was taken by the Government (T.R. 32-33), never sold any part or interest to anyone other than Mr. Sauget (T.R. 34).

Thus on the admitted facts and uncontradicted testimony we are presented with a clear cut legal question. Who, under the statute, owns the real estate and who is entitled to judgment. Appellant contends that upon the uncontroverted facts when the statutes are considered it is clear that the court

was in error when it entered judgment in favor of the defendant. The Civil Code of Guam controls and the following section clearly sets forth the answer. Appellant contends the law is clear. Sections 732, 1047 pp. 4, 5 ante clearly determines title to the building. Sections 789-792 p. 4 ante gives the rule for termination of the license and remedies thereunder. Section 1091 p. 5 ante sets forth the requirement of an instrument in writing to convey this title. Sections 1157.34, 1157.35 and 1157.38 pp. 5, 6 ante clearly forbid loss of title to registered land by adverse possession and further state that the grantee is not charged with the duty to make any inquiries as to adverse claim or other interests. The defendant could not prevail against the appellant in view of Sections 1214, 1624, 1951, pp. 6-7 ante. Clearly from the evidence in this case when compared with the Statutes of Guam, but one conclusion could or should be drawn. Jesus B. Untalan was the recorded and registered owner of the land in question. His title could not be defeated by adverse possession, title to registered land could only be transferred by a written instrument. Mr. Untalan conveyed his land to the appellant Sauget by a written instrument. The instrument was recorded. Mr. Villagomez, the appellee, had no written instrument. He had a permit, license or use at will. This could not ripen into more. There was no interest. The grantee from Mr. Untalan was not charged with making any inquiry. He did what the statute provides. He checked the certificate of registration, he then purchased.

A license can be terminated by a notice of revocation. This notice was given in compliance with the statute. Mr. Villagomez was required to vacate. He did not do so. Appellant contends that the court was in error when it failed to enter judgment for the plaintiff.

II.

THE COURT MISCONSTRUED THE PERTINENT STATUTES OF THE UNINCORPORATED TERRITORY OF GUAM.

The court failed to recognize the fact that in this factual situation the question of adverse possession of any right in or to this property could not arise. This is clear from the statute. This was registered land and title is governed by the Registration Act. (Testimony and stipulation, T.R. 16, 17; Sections 1157.34, 1157.35, 1157.38 ante.) Thus evidence permitted by the court in support of the defendant's claim to have title adversely, to have purchased by an oral agreement, to have perfected his title by proscription are clearly outside the permissible issues of this case.

Appellant contends that the only question the court could consider was whether there were any rights acquired prior to the deed to appellant Sauget which precluded his deed from being effective. If not the other issue, did Sauget give notices in compliance with the statutes—appellant contends that this fact is admitted by the pleadings and proven by the evidence of Sauget. This being so, the final ques-

tion was the damages for holding over and when possession should be delivered to Sauget.

Rather the court considered evidence allegedly supporting the flimsy claim of adverse possession, of purchase orally, of payment of taxes yet in the name of Jesus B. Untalan. The only tax bill defendant Villagomez produced was on the adjoining lot and showed the house to be situated on that lot. Would a search of any records show the actual facts. Appellant believes not. (T.R. 65-67.) The court failed to construe the meaning of a license in accordance with the plain intention of the statute.

Appellant contends that the intent of the Land Registration Act and the related statutes respecting real estate is plain and that the prime purpose of these sections is to avoid and preclude such actions as this one and to bar this type of defense. Everyone is presumed to know the law. Registration of land is conclusive. The public records are notice to every one.

The court erred in considering, once the fact of registration was established, any evidence contrary to the statute which tended to impeach title.

Therefore, appellant contends the court erred, that the case should be reversed and the court directed to determine damages and enter judgment for the appellant.

III.

**THE JUDGMENT IS CONTRARY TO AND AGAINST THE
WEIGHT OF THE EVIDENCE.**

Appellant contends that having established the fact of the land in question being registered, that there was no conveyance of the piece to anyone but appellant Sauget. Any evidence tending in any manner to impeach his title or to diminish it is incompetent and cannot be considered and that the fact of title being in Sauget is conclusive. This cannot be contradicted. The evidence of the defendant as to building the house, the alleged oral contract, the payment of taxes, always in the name of Jesus B. Untalan, are not competent to alter the fact of title and as to Mr. Sauget shall not have been considered. The court seemed to consider implied fraud or some type of estoppel. However, since fraud was not pleaded as a defense under the Federal Rules it cannot be considered. In any event it would not be that of Mr. Sauget. He, in accordance with the statute relied upon the certificate of title. Surely one need do no more than comply with the law. When the immaterial and incompetent evidence is disregarded and alone the competent evidence considered, it is clear that it was established conclusively that Mr. Sauget was the owner of this property, that he has the right to possession and that the only undetermined fact is the proper measure of damages.

If the court had prepared or caused to be prepared findings of fact and conclusions of law the fact would

have been clear. The court, had it considered proper findings of fact, would not have fallen into the error.

Appellant contends that the judgment is contrary and opposed to the competent evidence and is based upon evidence entitled to no weight and should be reversed.

IV.

THE COURT MISCONSTRUED THE DEED TO THE PLAINTIFF.

The deed to the plaintiff, T.R. 17. Plaintiff's Exhibit No. 2. A full covenant warranty deed does contain a recital of an oral license to the appellee Villagomez. However, the court construed this to be an estate or an interest in the land. In this the court, appellant contends, was in error. First and foremost appellee denies that he had a license. He claims ownership. Ownership cannot be proved or acquired either by an oral agreement to sell even if such were the fact, or by adverse possession. In both instances the statutes of Guam preclude such proof in the matter of registered land as here under consideration. The appellee claims no lease. Of course a lease is void unless in writing and recorded if for over one year. Thus, lease is not in issue. From the terms of the deed and the evidence at the trial, what could appellee have? Appellant claims either a license or he was a trespasser. No allegation of trespass was or is made. Appellee had a mere license. Yet the deed being a warrantee deed, the

oral license which under the statutes requires a thirty day notice to quit and therefore constitutes an encumbrance, to avoid a breach of warrantee had to be recited. Can this recital convey any interest in the land to appellee. Is not the proper and only construction which the court could place upon this provision that it constituted notice to the appellant of the oral license and that whenever he desired to terminate it he should give the required notice. Appellant claims that the court was in error in holding that this clause did more than advise him of the fact that there was a licensee in possession. That it did no more than tell him that to obtain possession he had to revoke this license, as he did.

V.

THE COURT ERRED IN CONSIDERING DEFENDANT'S CLAIM TO HAVE TITLE BY ADVERSE POSSESSION.

Adverse possession can only be perfected and ripen into title which may be perfected in accordance with the provisions of the statutes. Adverse possession is a fictitious transfer of title from one person to another without consideration and as a matter of public policy. It is not created for the purpose of depriving a man of his property for the benefit of a wrong-doer and must be in strict compliance with the statutes. It cannot be pled as a defense neither can it be perfected except in those instances where the statute permits.

This land, herein concerned, is registered land. None can obtain title adversely to registered land. (Sections of the Civil Code 1157.34, 1157.35, 1157.38, pp. 5, 6 ante.) These sections clearly preclude any attempt to establish title except by deed. Therefore the court erred in permitting the appellee to introduce any evidence on this defense and is in error when it considered this defense to be of any validity in this case. Further, the appellee holding under a license cannot hold adversely to the grantor of the license. The testimony of appellee and his witnesses (T.R. pp. 59-66, 68-74), fails to show other than the appellee was not claiming title but was holding under and from Mr. Untalan. Surely this is not competent evidence to establish title.

The appellee did not in any event meet with the requirements of Sections 320, 321, 325, 326, of the Code of Civil Procedure, pp. 8, 9, 10 ante, under which he could claim if at all to have title by adverse possession.

Appellant concludes therefore that the court erred in considering the defense of adverse possession and the testimony of appellee and his witnesses except as admissions of appellant's title.

VI.

**THE COURT ERRED IN NOT FINALLY DETERMINING
THE ISSUES.**

In this case appellant claims that all the material facts and issues were before the court. The court did have jurisdiction. All issues were clearly raised by the pleadings. Namely, appellant claimed ownership, that the appellee was a mere licensee, that his license was revoked in accordance with the statute. That appellant was entitled to possession. That the reasonable rental value was \$225.00 per month and that for wilfully holding over he was entitled to triple rental as damages.

Appellee claimed ownership, both by oral purchase and by adverse possession and claimed the right to possession. Clearly all issues were before the court. It was admitted that title was and is in appellant Sauget. The statutes preclude defendant obtaining title adversely since the land was registered, a fact stipulated. The statutes declare void an oral sale of land. The actions of the appellee as he himself testified are inconsistent with a claim of ownership.

The issues appellant claims are simple once his title was admitted. What was the measure of damages for holding over and when was he entitled to possession. The oral opinion of the court assumes duties and obligations upon the part of the appellant which are contrary to the express provisions of the statutes, set forth ante.

This is an action of ejectment and the issues are clearly threefold, title, damages and possession. Adverse possession is not and cannot be an issue here.

The court having found title to be in appellant erred in not deciding the remaining issues of this case, all matters within the jurisdiction of this court and all raised by the pleadings. Rather, the court preferred to rest its findings upon some theory of adverse possession without title and contrary to the statutes.

The court rather than leaving an action within its jurisdiction and before it in an inconclusive state should have found all the facts and therefrom decided the issues there presented and it was error not to do so.

CONCLUSION.

In conclusion, the appellant claims that the court was in error and the judgment should be reversed and remanded with instructions to determine the damages and enter judgment for the appellant.

Appellant believes that the court clearly misconstrued the pertinent statutes and was in error; that the judgment is opposed to and contrary to not only the law but the evidence and further the court was in error in its construction of the deed to appellant.

That the court was precluded by the statute and in error in giving any consideration to the contentions of adverse possession.

Therefore, the appellant concludes that it has been demonstrated and the record clearly shows that the judgment should be reversed and judgment for possession and damages entered for the appellant.

Dated, Agana, unincorporated territory of Guam.
25 March 1955.

Respectfully submitted,

FINTON J. PHELAN, JR.,
Attorney for Appellant.